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In re Application of
Tzong-Ming Wu, et. al.
Application No. 09/107,072
Filed: June 29, 1998
Attorney Docket No. 18506-226

OFFICE OF PETITIONS

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed on September 1, 2009 and supplemented on September 2, 2009, to revive the above-identified application.

In response to the decision mailed July 1, 2009, petitioner submits the present request for reconsideration.

It is noted that Anthony King was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, his statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

Since the above application has been abandoned for an extended period of time, the Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the lengthy statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a the reply in the form of a Request for Continued Examination (RCE) along with the \$810 fee and the submission under 37 CFR 1.114; (2) the petition fee of \$1,620; and (3) an adequate (lengthy) statement of unintentional delay. Therefore, the petition is granted.

The Office acknowledges receipt of \$1,110 for a three months extension of time filed on January 14, 2009. However, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,110 fee was subsequent to the maximum extendable period for reply, this fee is unnecessary and petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

This application file is being transferred to Technology Center Art Unit 3627 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.



Andrea Smith
Petitions Examiner
Office of Petitions